

Date: June 19, 2008
To: FCC Commissioner Michael Copps
From: David P. Hudyma, Jr.
Subject: Proceeding 08-82

Mr. Copps,

As an attorney practicing in the field of intellectual property law, and a consumer of High-Definition ("HD") television and Digital Video Recording ("DVR") services, I am quite familiar with many of the issues presented in this matter and would like to provide my comments. In general, I must strongly oppose the MPAA in seeking a waiver of the commission's prohibition on the use of selectable output control ("SOC").

The commission should not waive its prohibition on the use of SOC for set-top boxes since there are few benefits to the public but many large detriments. I have both HD television service and a set-top box with DVR service provided by my cable operator. The ability or lack of ability to receive high definition feature films prior to the films' prerecorded media release dates has little or no bearing on consumer's decisions to purchase HD televisions. The position to the contrary taken by the MPAA is false and misleading and should be disregarded since they have provided no compelling, independent evidence in support of their position.

Furthermore, it must be realized that the ability of the MPAA, or any other content producers, to control what consumers can and cannot record on their DVR's damages the market for HD content and DVR's. The strong expectation exists that when one purchases DVR service they will be able to record any of the content that is broadcast to their homes for viewing at a later date and time. To allow the recording of some programming, while restricting others, will only cause confusion and consternation among consumers causing many to forego this service. I speculate this is the larger goal of the MPAA in seeking this waiver using a suspiciously expedited processing and shortened comment period.

In conclusion, please keep the interests of the greater public in mind when deciding this matter and do not cripple the rights of the public or the functionality of this relatively new technology. From a legal standpoint, the United States Supreme Court has already affirmed the general ability and interest of the public to use technology to record content. *See Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 471 (1984). Also, keep in mind what happened when the FCC issued its misguided "broadcast flag" regulations. *See Am. Library Ass'n v. FCC*, 406 F.3d

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689 (D.C. Cir. 2005). No public interest is served by granting this waiver at the behest of a self-interested private lobby such as the MPAA.

Sincerely,

David P. Hudyma, Jr.